

In a previous case this Court had applied the ruling of the Court of Appeal in England in *Coplans v. King*⁽¹⁾. In this case counsel for the appellant contended that that ruling was based, not on the interpretation of the English Act, which is identical in its terms with the local Ordinance, but on the restriction on the powers of the Court of Appeal imposed by the County Courts Acts 1934. It is true that Scott, L.J., in the dicta in the case of *Chandler v. Strevett*⁽²⁾, referred to that Act, but it seems to me that the judgments in the later case do not depend on that Act, but merely on consideration of the terms of the relevant section of the English Rent Acts. I consider, therefore, that this Court should continue to apply the ruling in *Coplans v. King*⁽¹⁾ to cases of this kind. Lord Greene, M.R., said in that case at p. 394, "If in a case there is evidence of hardship on one side and none on the other, the County Court Judge can come to only one conclusion, and if he finds hardship where the facts are not sufficient to constitute hardship in law.... he makes an error in law, but, once there is evidence which in law can amount to hardship on two sides, Parliament has deliberately made the County Court Judge the conclusive judge of the fact which is the greater hardship". In *Robinson v. Donovan*⁽³⁾ Scott, L.J. said: Under the Act (obviously the Rent Act) the judge is the final arbiter.

With that ruling in mind it is necessary to consider the facts of the present case. It should be noted that the local Ordinance applies to business as well as to residential premises and therefore, in this Colony, it is necessary to consider kinds of hardship which do not trouble the Courts in England. In the present case the premises are substantially used for business purposes. They are only residential to the extent that a considerable number of employees are boarded there. I think that the commercial aspects of the case are predominant. The tenants use the premises for conducting a wholesale textile business. They are a very rich and very important firm. The learned Judge accepted the evidence on behalf of the tenants that the carrying on of their business depended on the occupation of premises in the upper part of High Street where they now are. He found that if they moved 200 yards down the street their wholesale business would be very considerably diminished, if it were not lost entirely. The learned Judge appears to have considered that no suitable alternative accommodation was available. If it is possible for the rich to suffer hardship, and I suppose that they can, it seems that the tenants would suffer hardship if the landlord were given possession. It is admitted that the landlord would suffer hardship

if refused. On the commercial side he would lose the opportunity of reviving a wholesale business which he was forced to discontinue in 1942. The assessment of the extent of the hardship on both sides is exclusively a matter for the Judge at first instance. I do not think that this Court can interfere with his assessment and this appeal must be dismissed with costs.

Deposit to be paid out to respondents.

Appeal dismissed.

**Re LEO HOON HONG;
Ex parte THE MUNICIPAL COMMISSIONERS
OF THE TOWN AND PORT OF MALACCA.**

[Orig. Civ. Juris. (Abbott, J.) November 5, 1951]

[Malacca — Bankruptcy No. 2 of 1951]

*Bankruptcy Ordinance (Cap. 45), s. 3(1)(i) —
Bankruptcy Notice — Judgment to pay Costs of the
Proceedings — Whether final judgment.*

One Leo Hoon Hong took proceedings against the Municipal Commissioners of Malacca; Judgment was given against him and he was ordered to pay costs of the proceedings taxed at \$3,320. He was unable to pay this amount. The Municipal Commissioners of Malacca applied to Court for issue of a Bankruptcy Notice under section 3(1)(i) of the Bankruptcy Ordinance (Cap. 45).

Section 3(1)(i) reads as follows:—

"The debtor commits an act of bankruptcy if a creditor has obtained a final judgment against him for any amount and execution thereon not having been stayed has served on him in the Colony, or by leave of the Court elsewhere, a bankruptcy notice under this Ordinance with the terms of the judgment dealt in accordance with the terms of the judgment.....and he does not within seven days after service of the notice either comply with the requirements of the notice....."

Held, that an order for payment of Costs is not a final judgment, and therefore, this application, not being founded upon a final judgment, cannot succeed. Application dismissed.

BANKRUPTCY.

Municipal Secretary, Malacca, for Municipal Commissioners-Applicants.

Leo Hoon Hong — debtor in person.

Cur. Adv. Vult.

Abbott, J. : — This is an application by the Municipal Commissioners of the Town and Port of Malacca for the issue of a bankruptcy notice upon one Leo Hoon Hong. Leo Hoon Hong took certain proceedings in the High Court against the Municipal Commissioners; judgment was given against him and he was ordered to pay the costs of the proceedings taxed at \$3,320. He has not paid the costs and, in this Court, he declared his inability to do so. This

application is founded upon section 3(1)(i) of the Bankruptcy Ordinance of the Straits Settlements (Cap. 45). That sub-section reproduces section 4(1)(g) of the Bankruptcy Act, 1883, Cap. 52 of the English enactments. Each of these sub-sections makes provision only in respect of final judgments. The bankruptcy law of England is now governed by the Bankruptcy Acts 1914 and 1916, sub-section 1(i)(g) of which relate to final orders as well as final judgments. The Straits Settlements Bankruptcy Ordinance was not amended so as to conform with the English Acts. An order for payment of costs is not a final judgment, and therefore, it appears to this Court that this application, not being founded upon a final judgment, cannot succeed.

The Application is, therefore, dismissed. I make no order as to costs.

Application dismissed.

ONG SEAH THOR v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.)
November 8, 1951]

[Singapore — Magistrate's Appeal No. 120 of 1951]

*Minor Offences Ordinance (Cap. 24), s. 34(1) —
Meaning of 'fails to account satisfactorily' discussed.*

In this case the Magistrate found that the circumstances in which the goods were found gave rise to a suspicion that the goods in question were being illegally imported.

Held, that this was not enough to justify conviction under section 34(1). Conviction quashed.

Section 34(1) discussed.

Cases referred to :—

- (1) *Hadley v. Parks* (1866) 14 L.T. (N.S.) 325.
- (2) *Queen-Empress v. Dhanjibhai* (1895) I.L.R. 20 Bombay 348.

MAGISTRATE'S APPEAL.

S. H. D. Elias for the appellant.

A. D. Farrell (Crown Counsel) for the Crown.

Murray-Aynsley, C.J. : — This appeal arose out of a conviction under section 34(1) of Cap. 24, the Minor Offences Ordinance.

The sub-section reads as follows :—

"Any person who has in his possession or conveys in any manner anything which may be reasonably suspected of being stolen or fraudulently obtained shall, if he fails to account satisfactorily how he came by the same, be liable to a fine not exceeding fifty dollars, or to imprisonment of either description for a term which may extend to three months."

This provision is obviously based on section 24 of the Metropolitan Police Courts Act, 2 & 3 Vict., Cap. 71. This reads as follows :—

"That any person who shall be brought before any of the said Magistrates charged with having in his possession, or conveying in any manner, anything which may be reasonably suspected of being stolen or unlawfully obtained, and who shall not give an account to the satisfaction of such Magistrate how he came by the same, shall be deemed guilty etc., etc."

It appears that the version in force in the Colony was copied from the Indian Act XIII of 1856, section 35. There should be noted two differences between the English provision and that in question, viz. one says "unlawfully", the other "fraudulently"; and also the English version provides that the explanation shall be to the Magistrate, whilst the local Ordinance is silent on this point.

In either case the provision is of a very extraordinary character and anomalous when compared with the norm of English Criminal law and procedure.

I have only been able to find one English case which interprets the provision. That is the case of *Hadley v. Parks*⁽¹⁾. That case very materially restricted the scope of the provision by linking it with section 66 of 2 & 3 Vict. c. 47, the Metropolitan Police Act, which gave power to constables to search "any vessel, boat, cart or carriage in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found," and also "any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained etc. etc." The Court appears to have been impressed by the "very extensive and arbitrary power" conferred by the sections in question and to have assumed that they were intended to deal with the situation that arose at a time before the invention of the electric telegraph and at a time when railways were uncommon and the difficulty of communication made it impossible for the police to obtain information about thefts committed out of the immediate neighbourhood. Whether there is any justification for the anomaly at the present time in this Colony is a question for the legislature.

The sub-section under consideration gives rise to difficulties of three kinds. There are firstly questions which arise out of the alleged possession. In the present case the Magistrate found that the circumstances in which the goods were found gave rise to a suspicion that the goods in question were being illegally imported. This is, of course, not enough to justify a conviction under the sub-section and I, therefore, quashed the conviction.